ferent states, see BRADBURY, WORKMEN'S COMPENSATION, 342–360. The principal case changes the former rule in Ohio in so far as it had been decided, by the Superior Court, in *Plasko* v. *American Carriage Co.*, 15 N. P. (N. S.) 273, 4 N. C. C. A. 843.

WORKMEN'S COMPENSATION—STATE AND FEDERAL ACTS.—A was employed as a laborer by B, a carrier doing intra- and inter-state business. While tamping ties A was struck in the right eye by a stone which came from the ground. There was no negligence on the part of B. The New York Workmen's Compensation Commission awarded A compensation. B contends that as it was doing inter-state business the Federal Employer's Liability Act applied and that A could not recover because negligence on the part of the employer was a necessary element. *Held,* that the state law and not the federal law applies, on the theory that the injury came within a class to which the Federal Employer's Liability Act was not meant to apply. *Winfield* v. *N. Y., C. & H. R. R. Co.*, (N. Y. 1915) 110 N. E. 614.

Congress passed an Employer's Liability Act in 1908 applicable to inter-state carriers, providing they shall be liable in damages to any employee suffering injury while employed by such carrier in such commerce, due to the negligence of any of its officers, agents or employees, etc. It will be noticed that negligence is a necessary element to the right of recovery by an employee. The New York Compensation Act, under which recovery was had in the principal case, allows recovery even where there is no negligence. The court recognized the principle that once Congress has acted in a field over which it has the power to act, all prior state action is superseded. *Smith* v. *Alabama*, 124 U. S. 473; *Erie R. R. Co.* v. *N. Y.*, 233 U. S. 671, 52 L. R. A. (N. S.) 266. The decision is rested upon a rather novel ground, that is, that the act of Congress in question having provided for a recovery only in those cases where the carrier is negligent, by necessary implication, Congress did not intend the act to apply to any case in which the carrier was not negligent From this the court reasoned that Congress had not legislated upon this particular sphere and as the state had done so, recovery could be had under the state law. It would certainly seem that the implication arising from the failure of Congress to allow a recovery where no negligence was shown would be very strong to the effect that Congress intended that no recovery should be had in such cases. In justification of the decision it may be said that where the health and safety of citizens of the state are involved, any Federal statute will not be held to supersede a state law covering the same field unless it clearly appears that the two are inconsistent. *Missouri, K. & T. R. R.* v. *Haber*, 169 U. S. 613; *Reid* v. *Colo.*, 187 U. S. 137. The decision might have been placed upon the ground that the Federal Liability Act did not apply, since the defendant had been doing both intra- and inter-state business and since the facts did not show that the plaintiff A was employed in inter-state commerce as required by the Federal Liability Act, but showed rather that he was doing a class of work that applied to either.